

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting the Availability of Diverse and)	MB Docket No. 16-41
Independent Sources of Video Programming)	

COMMENTS OF RFD-TV

Patrick Gottsch, Founder
RFD-TV
49 Music Square West Suite 301
Nashville, TN 37203
(615) 227-9292

March 30, 2016

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION AND SUMMARY	1
DISCUSSION	4
I. RFD-TV PROVIDES UNIQUE, RURAL- AND SENIOR-ORIENTED PROGRAMMING THAT IS SOUGHT BY BOTH RURAL AND URBAN CONSUMERS	4
A. History of RFD-TV	4
B. Overview of RFD-TV Programming	5
C. RFD-TV's Viewership, Rankings, and Accolades	7
II. RFD-TV HAS FACED SIGNIFICANT DISTRIBUTION CHALLENGES IN RECENT YEARS	8
A. Loss of Carriage by Comcast	10
B. Loss of Carriage by Verizon	12
C. Lack of Carriage by MVPDs and Resulting Harms to RFD-TV	15
D. Other Marketplace Obstacles Faced by RFD-TV	20
III. THE LOSS OF RFD-TV AND OTHER INDEPENDENT CHANNELS HARMS BOTH RURAL AND URBAN CONSUMERS	21
A. Consumers in Both Rural and Urban America are Drawn to Rural Programming	21
B. Lengthy Contracts and Termination Fees Raise Switching Costs and Limit the Potential Disciplining Effects of Competition	25
IV. THE COMMISSION SHOULD TAKE ACTION TO ENSURE THE AVAILABILITY OF RURAL- AND SENIOR-ORIENTED PROGRAMMING	27
A. The Commission Should Use This NOI as a Spring Board for Concrete Action	28
B. The Commission Has Legal Authority to Take Action to Preserve Independent Programming and Protect Consumers	31
CONCLUSION	32

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Promoting the Availability of Diverse and)	MB Docket No. 16-41
Independent Sources of Video Programming)	

COMMENTS OF RFD-TV

RFD-TV hereby submits these comments in response to the *Notice of Inquiry* (“*NOI*”) issued in the above-captioned docket.¹

INTRODUCTION AND SUMMARY

RFD-TV is an independent programmer that brings rural content to all Americans, not only in rural markets but also in urban and suburban markets throughout the country, including senior citizens. RFD-TV is the nation’s first 24-hour television network featuring programming focused on agribusiness, equine, rural lifestyle, western sports, music, and family-friendly entertainment. This is unique programming, including news programming focused on rural America, that RFD-TV viewers cannot find anywhere else.

RFD-TV applauds the Commission for releasing the *NOI* to investigate whether independent programmers face hurdles in reaching consumers. The Commission’s *NOI* is particularly timely because on February 1, 2016, Verizon FiOS unilaterally dropped RFD-TV entirely from distribution – without notice or discussion – after eight years of carriage, resulting in a loss of access to 3.1 million subscribers for RFD-TV. Verizon did so despite pleas from tens

¹ *In the Matter of Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, FCC 16-19 (rel. Feb. 18, 2016) (“*Notice of Inquiry*” or “*NOI*”).

of thousands of FiOS subscribers (many of whom have filed comments in this docket). This was not a rate dispute, as evidenced by the extremely low cost of RFD-TV to MVPDs and the fact that Verizon gave \$60 in billing credits to a select few of those subscribers that complained about its decision to drop RFD-TV. Verizon's actions follow on the heels of it dropping other rural- and senior citizen-oriented programming such as The Weather Channel, the Sportsman Channel, and the Outdoor Channel in the past year.

RFD-TV is concerned that Verizon's actions, following Comcast's decisions to drop RFD-TV in two western states in 2013 and block the channel from further distribution after Comcast's merger with NBCUniversal in 2011, along with the lack of any significant launches of RFD-TV on Cox, Bright House, Time Warner Cable, and Cablevision, exhibits a pattern of discrimination against rural programming by urban-focused MVPDs. Indeed, TV distribution today increasingly is purchased and sold by large, urban-based media conglomerates that are demonstrating a clear and persistent bias against rural content. This discrimination inflicts substantial harm on independent programmers such as RFD-TV, resulting in RFD-TV being blocked from distribution in 20 of the top 25 markets in the country and thereby depriving it of Nielsen ratings and critical advertising revenues.

RFD-TV faces several other marketplace obstacles in obtaining distribution. These include program bundling, in which large media conglomerates force MVPDs to carry their less desirable channels in order to obtain their popular programming, which thereby reduces the capacity and opportunities available for independent channels such as RFD-TV. Tiering practices by MVPDs also exacerbate the problem, as independent and rural content is often relegated to more expensive tiers with lower penetration. In addition, contractual provisions

such as most favored nation and alternative distribution method clauses impede RFD-TV's ability to gain distribution through creative distribution strategies.

When the only vehicles through which to obtain carriage are controlled by urban-clustered cable companies and other urban distributors, the interests of rural Americans and senior citizens are ignored. In RFD-TV's experience, the challenges that small and independent programmers face in obtaining carriage have a disproportionate impact on rural America and senior citizens. Moreover, MVPDs such as Verizon increasingly lock these customers into lengthy contracts or charge substantial termination fees, even when they subscribe specifically on the promise of obtaining particular programming such as RFD-TV. Such contracts and termination fees raise customers' switching costs, and reduce any benefits of MVPD competition, by reducing customers' ability to switch to a competing provider that carries RFD-TV.

RFD-TV calls on the Commission to use this *NOI* as a springboard for more decisive and concrete action to ensure that independent programming reaches consumers. The Commission must act now to address the pattern of discrimination by Comcast and Verizon as well as Cox, Bright House, Time Warner Cable, and Cablevision against rural- senior citizen-oriented programming. The Commission has the legal authority to preserve independent programming and protect consumers – particularly rural Americans and senior citizens – by adopting rules to curb MVPD practices that freeze out independent channels and by mandating carriage of independent content. Indeed, RFD-TV presents an ideal test case, as it has been the subject of clear discrimination by Verizon in particular, with no coherent business rationale to support Verizon's actions, leaving tens of thousands of customers irate and without the bargain of the programming for which they subscribed with Verizon.

The Commission should act now to establish rules to protect independent programming, and ensure that the needs of rural Americans and senior citizens—including the tens of thousands of RFD-TV viewers that have filed comments in this proceeding—are met. First, the Commission should initiate a proceeding to determine whether MVPD practices of requiring long-term subscriber contracts and imposing termination fees, along with cancellation of programming that was the basis for the subscriber’s enrollment in the first place, should be prohibited. Second, the Commission should launch an investigation into whether the pattern and practice of discriminating against rural programming by MVPDs, particularly Verizon, is based on bias rather than legitimate business decisions. Third, the FCC should take action in its ongoing “good faith” retransmission consent proceeding to “break up the bundle,” in order to unleash greater opportunities for independent programming. Fourth, the agency should commence a rulemaking requiring MVPDs to devote a minimum percentage of their channel capacity to independent programmers. Fifth, the Commission should continually look for other procedural vehicles, such as merger proceedings, through which it can promote the availability of independent programming. Only after taking these actions will the Commission be able to achieve its goal in this proceeding of fostering a diverse marketplace for the delivery of multichannel video programming.

DISCUSSION

I. RFD-TV PROVIDES UNIQUE, RURAL- AND SENIOR-ORIENTED PROGRAMMING THAT IS SOUGHT BY BOTH RURAL AND URBAN CONSUMERS

A. History of RFD-TV

RFD-TV is a public interest success story. It launched in 2000 as a result of the public interest obligations in Section 335 of the Communications Act, added as part of the 1992 Cable Act, which required DBS providers to reserve 4% to 7% of their channel capacity for

“noncommercial programming of an educational or informational nature.”² RFD-TV therefore began as a non-profit network intended to serve the needs of rural Americans and senior citizens with noncommercial rural news and informational programming. Because of the public interest mandate in Section 335, RFD-TV was able to sign its first distribution agreement with DISH Network and have the opportunity to prove that an independent network focused on the business and lifestyle of rural America was viable.

In 2007, RFD-TV became a for-profit entity, which enabled it to establish its rural news division due to viewer demand. RFD-TV subsequently restructured its agreements with DISH Network and DIRECTV and then signed carriage agreements with Charter Communications and Time Warner Cable, as well as with Comcast, Verizon FiOS, Cox, AT&T U-verse, Mediacom, Suddenlink, Bresnan, and more than 600 independent cable operators. After fifteen years of expansive growth, RFD-TV is currently distributed to nearly fifty million rural, suburban, and urban homes in the U.S., an impressive feat for a truly independent network.

In 2012, RFD-TV’s parent company, Rural Media Group, purchased the cable network Family Net to provide additional rural and western sports programming. And a year later, Rural Media Group launched RURAL RADIO on Sirius XM Channel 147 as the only nationwide rural channel on that network.

B. Overview of RFD-TV Programming

RFD-TV provides educational and informational content to the agribusiness, equine, and western sports communities that is not available on any other channel. With its investment in rural and agribusiness news in particular, RFD-TV has become the news and information

² 47 U.S.C. § 335(b)(1).

programming channel representing rural America. It produces more than thirty hours per week of rural-focused live newscasts, including broadcasts from its news bureau at the U.S.

Department of Agriculture in Washington, D.C., which provides information relevant to rural interests about developments on Capitol Hill and at other Federal agencies. And from its Chicago news bureau, RFD-TV supplies daily reporting directly from the grain and livestock pits at the Chicago Mercantile Exchange.

In addition, in 2015, RFD-TV – in a joint venture with Mediacom Communications – launched original programming that provides voters with a rare opportunity to see every U.S. presidential candidate appear in a town hall format before a live audience while responding to questions affecting agriculture and rural interests. This Rural Town Hall series serves a unique need and has proven very popular among both rural and urban viewers as well as candidates seeking to connect with voters on rural issues.

RFD-TV also meets the programming needs of senior citizens in several ways. For example, RFD-TV, in partnership with AARP, broadcasts a monthly live one-hour call-in show to address issues affecting senior citizens such as health care, consumer protection, and retirement planning. Additionally, RFD-TV showcases entertaining rural lifestyle and traditional country music programming on nights and weekends that is highly popular with seniors.

Furthermore, RFD-TV supports rural communities by investing in and supporting women- and youth- focused programming and activities, including broadcasting female and youth western sports and conventions. RFD-TV provides daily western sports coverage during its rural evening news segment, entertaining viewers with the latest coverage of the rodeo industry, Professional Bull Riders events and horse shows. In addition to the content that is produced directly by RFD-TV, it airs educational and entertaining content from 100 independent

programmers and continues to receive requests from additional programmers seeking to serve RFD-TV's underserved constituency.

C. RFD-TV's Viewership, Rankings, and Accolades

RFD-TV is an independent programmer with a loyal and passionate fan base. RFD-TV is consistently ranked in or near the top 20% of all cable networks watched in terms of time spent viewing. Notably, this viewer base extends beyond rural areas. Indeed, independent research has consistently shown that RFD-TV has an even higher percentage of its viewership in urban markets because of the large number of senior citizens in those markets who are interested in the variety of content that RFD-TV provides. Indeed, RFD-TV has the oldest average age of any Nielsen-rated cable television network. As the Commission is well aware, RFD-TV's viewers are not shy about expressing their views. More than 70,000 commenters wrote to express their support of RFD-TV and rural programming and their concerns about the proposed Comcast-Time Warner Cable merger. And more than 23,000 commenters wrote again during the agency's review of the AT&T/DIRECTV merger. Clearly, these comments demonstrate that the preservation and protection of rural independent programming during rapid industry consolidation has been a matter of growing public concern in recent years. Indeed, the Commission should take note that 99% of the more than 33,000 comments filed to date in this proceeding are from rural, urban, and suburban consumers throughout the country that are interested in protecting rural- and senior-oriented programming such as RFD-TV.

In addition, RFD-TV has won awards not only for its programming, including its flagship news programs, Market Day Report and the Rural Evening News, but also for the value it provides to MVPDs. For example, in 2015, RFD-TV was ranked as a "Best Bargain" cable network for the third year in a row according to the 20th Annual Independent Cable Network

Survey. In other words, distributors consistently rate RFD-TV as fairly priced compared to other cable networks.

II. RFD-TV HAS FACED SIGNIFICANT DISTRIBUTION CHALLENGES IN RECENT YEARS

Despite its successes, RFD-TV has faced significant challenges in recent years in obtaining carriage for independent rural programming in a rapidly consolidating media landscape. In fact, five MVPDs have dropped RFD-TV in some or all of their territories since the beginning of 2013. As a result, RFD-TV has lost access to a total of *more than 3.8 million subscribers* during that period:

RFD-TV SUBSCRIBERS LOST DUE TO LOSS OF CARRIAGE BY MVPDs			
MVPD	Approximate Date That MVPD Dropped RFD-TV	Markets Affected	Number of Subscribers Lost
Verizon FiOS	1/31/2016	CA	267,601
		FL	243,915
		MA	218,350
		MD	587,660
		NJ	75,233
		NY	881,042
		PA	458,088
		RI	93,045
		TX	137,654
		VA	137,921
		Total	3,100,509
Comcast Communications	7/31/2013	CO	398,947
		NM	69,860
		Total	468,807
Frontier Communications	10/24/2014	CT ³	180,000
	12/31/2013	IN	14,574
		OR	21,452
		WA	19,713
		Total	235,739
Wild Open West	3/31/2013 to 8/31/2013	Concord, AL	406
		Leslie/Stockbridge, GA	686
		Bellevue/Olivet, IL	366
		Charlotte, MI	31,287
		Lawrence, MO	5,000
		Sioux Falls, SD	14,600
		Total	52,345
Cable One	5/21/2013	MS	5,748
		MS	1,164
		MS	3,048
		Total	9,960
GRAND TOTAL			3,867,360

³ Importantly, in response to consumer demand and in a demonstration of its commitment to rural programming, Frontier subsequently relaunched RFD-TV in Connecticut on January 1, 2015, resulting in RFD-TV regaining access to approximately 180,000 Frontier subscribers.

As discussed below, among the most damaging losses of carriage that RFD-TV has faced are those by Comcast in two states in 2013 and by Verizon throughout its territory just last month. In addition, RFD-TV has received no major launches of the channel on Comcast's systems since Comcast's merger with NBCUniversal in 2011 and no significant launches on the systems of several other MVPDs. RFD-TV is harmed not only by this lack of carriage but also by other marketplace obstacles that limit its distribution. These obstacles include program bundling, tiering, most favored nation provisions, and alternative distribution method clauses.

A. Loss of Carriage by Comcast

On August 13, 2013 – after its merger with NBCUniversal – Comcast dropped RFD-TV from carriage throughout Colorado and New Mexico, two western states with strong rural economies. In a single day, RFD-TV lost access to 470,000 homes in those states, which at the time represented 43% of RFD-TV's distribution on Comcast. Viewers in major markets such as Denver, Colorado Springs, Pueblo, and Albuquerque could no longer watch RFD-TV despite the channel's strong Nielsen ratings in these markets.

Comcast customers were outraged, resulting in an outpouring of support for RFD-TV from both urban and rural subscribers asking Comcast to reconsider its decision and return RFD-TV to Comcast's channel lineup. Further exasperating these subscribers was Comcast's decision to launch HD channels the day after dropping RFD-TV. These included Disney Jr., which is owned by The Walt Disney Company, the Smithsonian Channel, which is partly owned by CBS' Showtime Networks, and the Cooking Channel, which is owned by Scripps Networks Interactive. This was a stark example of the large media conglomerates' influence in determining the programming that the public can watch.

In May 2014, when a Comcast senior executive was asked by the Chairman of the House Judiciary Committee about the company's reasons for dropping RFD-TV in Colorado and New

Mexico, he responded that Comcast is “primarily an urban clustered cable company.”⁴ And in response to a similar question from another legislator, the Comcast executive “emphasize[d] again” that it is “primarily an urban cluster cable company.”⁵ Further, in its written response to the Committee, among the reasons Comcast provided for dropping RFD-TV was that Comcast carries other channels that distribute “rural lifestyle[]” programming, including *The Dukes of Hazzard*, *The Beverly Hillbillies*, *Bonanza*, and *Gunsmoke*.⁶ Comcast also pointed to broadcasts of reruns of the *Little House on the Prairie* as evidence of its distribution of rural programming.⁷ Comcast in effect acknowledged and admitted on the record that it is urban-minded and relies on decisions by urban-based executives who have no understanding of or experience with the rural lifestyle. If left unchecked, the discriminatory practices currently being exhibited by just a few programming executives from America’s largest cities will continue to limit available options in the marketplace and not properly reflect the geographic diversity of our great country.

Moreover, since its merger with NBCUniversal in 2011, Comcast has stopped launching RFD-TV on its systems, thereby blocking RFD-TV from more than 21.5 million of Comcast’s 22.3 million subscribers. As a condition of merger approval, Comcast is required to add ten new

⁴ *Competition in the Video and Broadband Markets: The Proposed Merger of Comcast and Time Warner Cable, Hearing Before the S. Comm. on Regulatory Reform, Commercial and Antitrust Law of the H. Comm. on the Judiciary*, 113th Cong. 146 (2014) (Statement of David Cohen, Executive Vice President, Comcast Corporation).

⁵ *Id.* at 161.

⁶ *Id.* at 282 (Response to Questions for the Record from David Cohen, Executive Vice President, Comcast Corporation).

⁷ *Id.*

independent channels to its digital tier over the course of eight years.⁸ However, RFD-TV believes that Comcast is complying with this condition at the expense of existing independent channels such as RFD-TV. This result cannot be what the Commission intended when it imposed conditions to mitigate Comcast's ability and incentive to discriminate against or foreclose unaffiliated programming.⁹ Distribution of RFD-TV on Comcast has stopped while expansion of RFD-TV's distribution has occurred on the systems of AT&T, Frontier, Mediacom, and Charter, which have ties to rural communities. Again, Comcast's conduct demonstrates that distribution of independent programming is driven by the choices of a few urban-based programming executives.

B. Loss of Carriage by Verizon

The practice of urban-focused MVPDs discriminating against rural programming continued into 2016. On February 1, 2016, after eight years of carriage, Verizon unilaterally dropped RFD-TV entirely from distribution on its FiOS TV systems. RFD-TV was not the first rural-oriented channel dropped by Verizon. Between March 2015 and October 2015, Verizon stopped offering The Weather Channel, the Sportsman Channel, and the Outdoor Channel. These popular channels offer original content and had substantial viewer bases that asked Verizon for continued carriage on FiOS TV. If well-established, successful independent

⁸ *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, FCC 11-4, Appendix A, Conditions (2011) ("Conditions Concerning Carriage of Unaffiliated Video Programming").

⁹ *Id.* ¶ 110.

channels such as these are being dropped by distributors, it is obvious that any new independent channel has little or no chance of launching and being carried in today's environment.

On July 15, 2015, in anticipation of the upcoming renewal of RFD-TV due January 31, 2016 and out of concern that Verizon had dropped another independent channel, The Weather Channel, from its FiOS lineup, RFD-TV's Founder and President, Patrick Gottsch, met with Verizon programming executives in New York. Verizon assured Mr. Gottsch that it was not engaging in any such pattern, and that there was no cause for alarm that Verizon would drop RFD-TV. At the conclusion of the meeting, in an effort to show good faith, RFD-TV offered Verizon a 25% reduction in its already low monthly rate for another two-year renewal, which would take effect on February 1, 2016. Verizon executives told Mr. Gottsch that a reduction was "not necessary." In anticipation that this third two-year renewal was being exercised by FiOS TV, on December 14, 2015, RFD-TV's affiliate team met again with programming executives in Verizon's New York offices. The discussion centered on the possible launch of RFD HD in 2016 after the transfer of systems to Frontier Communications in California, Texas, and Florida was completed, thus freeing up bandwidth. Again, Verizon gave no indication of a pending decision to drop RFD-TV.

On December 24, 2015, at 9 pm on Christmas Eve, Verizon began notifying its FiOS TV customers that it was dropping RFD-TV effective January 31, 2016. No notice was provided to RFD-TV prior to this public announcement by Verizon. Over the first three weeks in January 2016, more than 50,000 emails, calls, and letters were sent to Verizon's New York offices supporting RFD-TV and asking Verizon to reconsider its decision. Nevertheless, Verizon dropped RFD-TV on February 1, 2016.

The only justification Verizon provided for its decision was that “each year, the cost of content increases substantially” and that “it is sometimes necessary to remove channels from our lineup.”¹⁰ This explanation, however, was puzzling given that RFD-TV was one of the lowest cost networks on FiOS TV, RFD-TV had never raised the monthly rate it offered Verizon during its eight years of carriage, and it had even offered a 25% rate reduction for the next two-year term. After it dropped RFD-TV, Verizon even gave \$5 monthly billing credits for 12 months (*i.e.*, a total of \$60) to FiOS subscribers (although it did so for only a select few of those subscribers that complained to Verizon rather than for all of the approximately 3,000,000 subscribers on the affected service tier). This sizeable cash rebate suggests that the extremely low monthly cost of RFD-TV was not Verizon’s motivating factor for dropping the channel. Verizon cannot genuinely maintain that its decision was based on price considerations, nor is there any indication whatsoever that Verizon passed any supposed cost savings onto consumers. The reality is that RFD-TV—with its low rates, millions of loyal viewers, and unique programming, but no leverage over Verizon—was dropped because it is an independent channel.

It is also worth pointing out that after its 2015 announcement of the sale of its FiOS assets in three states (California, Florida, and Texas) to Frontier, Verizon never mentioned to RFD-TV, nor to the FCC, that it would be dropped prior to the sale. Nevertheless, Verizon dropped RFD-TV in the markets subject to the deal with Frontier even before the deal closed, which prohibited continuity for Verizon subscribers in those areas who could regain RFD-TV carriage under Frontier ownership. Again, the only plausible explanation is that Verizon dropped RFD-TV because it is an independent channel.

¹⁰ See Attachment A.

The loss of carriage on Verizon FiOS TV has been devastating to RFD-TV's Nielsen ratings. Specifically, for the week ending January 31, 2016 – immediately before Verizon dropped RFD-TV – the channel's overall ratings *increased 12.4%* relative to the same week in the prior year. This was also the highest P18+ audience of 2016 at 12,648,000 impressions. By contrast, for the week immediately after Verizon dropped RFD-TV, these same overall ratings *decreased 13.7%* with a loss of 1,732,000 P18+ impressions. The *one and only* variable for this astounding drop in viewership is the loss of Verizon FiOS TV viewers. The second week in February saw a continuation of this negative trend, with P18+ impressions down 11.4%, as did the third week in February, with an even larger decrease of 17.5% when compared to the same week in the previous year. RFD-TV found that this sharp decline in ratings can be directly attributed to a 29% decrease in viewers in the Northeast territory served by Verizon FiOS. RFD-TV's ratings in other areas of the country remained stable or had a slight increase for these same three weeks. These numbers also rebut any potential argument by Verizon that its urban-clustered systems justified dropping RFD-TV; to the contrary, RFD-TV's viewership base was especially high in Verizon's urban-clustered systems.

C. Lack of Carriage by MVPDs and Resulting Harms to RFD-TV

In contrast to AT&T/DIRECTV, Mediacom, and Frontier, which offer RFD-TV to the vast majority of their subscribers in their most widely distributed packages, many MVPDs do not carry RFD-TV at all, or carry it only on a small number of systems. As shown below, these MVPDs include not only Comcast and Verizon but also Cox, Bright House, Time Warner Cable, and Cablevision:

DISTRIBUTION OF RFD-TV				
MVPD	RFD-TV Subscribers	Total Basic Subscribers	RFD-TV Penetration	HD Carriage
AT&T/DIRECTV	23,366,359	26,269,008	89%	Y (AT&T only)
Frontier	160,497	180,842	89%	Y
Mediacom	660,507	900,001	73%	Y
DISH	7,709,957	14,034,842	55%	Y
CenturyLink	120,777	269,000	45%	Y
Suddenlink	265,493	1,170,999	23%	N
Charter	837,945	4,295,998	20%	Y
Cox	223,427	4,209,669	5%	Y
Bright House	74,157	2,029,823	4%	N
Time Warner Cable	395,628	11,030,000	4%	N
Comcast	657,845	22,375,997	3%	N
Verizon FiOS	0	5,970,000	0%	N/A
Cablevision	0	2,468,739	0%	N/A

While the sudden loss of Comcast and Verizon carriage has been notable and public, equally challenging has been the sharply limited carriage by Cox, Bright House, Time Warner Cable, and Cablevision. This is despite eight years of meetings and negotiations, market research presentations, subscriber requests for RFD-TV, and an existing master affiliation agreement in place to carry RFD-TV. Taken together, Comcast, Cox, Bright House, Time Warner Cable, and Cablevision have demonstrated a persistent unwillingness to distribute RFD-TV to more than 5% of their subscribers.¹¹ As a result, RFD-TV is foreclosed from reaching millions of homes across the country. For example, as shown in the chart above, with only 4% penetration on Time Warner Cable's systems, RFD-TV is blocked from reaching approximately *10.6 million* Time Warner Cable subscribers. Comcast, Cox, Bright House, Time Warner Cable, and Cablevision have been unwilling to distribute RFD-TV to a significant percentage of their subscribers notwithstanding the facts that *more than half* of their subscribers are in rural "C" and

¹¹ RFD-TV's parent company, Rural Media Group, has also faced persistent unwillingness from MVPDs to distribute its other rural, independent, channel, Family Net.

“D” counties (as categorized by Nielsen based on Census data) and that these MVPDs receive constant requests from their subscribers in both rural and urban areas for RFD-TV. And along with Verizon, these MVPDs control access to more than 47 million homes.¹²

This lack of carriage by MVPDs harms RFD-TV in several ways. First, as shown below, it cuts RFD-TV off from distribution in 20 of the top 25 markets in the country—markets where Nielsen overnight ratings are measured.

¹² It is important to acknowledge that certain MVPDs, such as AT&T/DIRECTV, Frontier, Mediacom, and DISH have been particularly supportive and forward-looking in their support of RFD-TV and other independent programming.

RFD-TV CARRIAGE IN THE TOP 25 MARKETS NATIONWIDE			
DMA Rank	Market Name	Dominant Provider	RFD-TV Carriage
1	New York, NY	Cablevision	N
2	Los Angeles, CA	Time Warner Cable	N
3	Chicago, IL	Comcast	N
4	Philadelphia, PA	Comcast	N
5	Dallas-Fort Worth, TX	Time Warner Cable	N
6	San Francisco-Oakland-San Jose, CA	Comcast	N
7	Washington, DC (Hagerstown, MD)	Comcast	N
8	Boston, MA (Manchester, NH)	Comcast	N
9	Atlanta, GA	Comcast	N
10	Houston, TX	Comcast	N
11	Tampa-St. Petersburg (Sarasota), FL	Bright House	N
12	Phoenix (Prescott), AZ	Cox	N
13	Detroit, MI	Comcast	N
14	Seattle-Tacoma, WA	Comcast	N
15	Minneapolis-St. Paul, MN	Comcast	N
16	Miami-Ft. Lauderdale, FL	Comcast	Y ¹³
17	Denver, CO	Comcast	N
18	Cleveland-Akron (Canton), OH	Time Warner Cable	Y ¹⁴
19	Orlando-Daytona Beach-Melbourne, FL	Bright House	N
20	Sacramento-Stockton-Modesto, CA	Comcast	N
21	St. Louis, MO	Charter	Y
22	Charlotte, NC	Time Warner Cable	Y ¹⁵
23	Pittsburgh, PA	Comcast	N
24	Portland, OR	Comcast	N
25	Raleigh-Durham (Fayetteville), NC	Time Warner Cable	Y ¹⁶

It is imperative that RFD-TV have access to these markets because ratings in these markets determine the rates that advertisers are willing to pay for airtime on the channel, and RFD-TV

¹³ RFD-TV has 6,930 Comcast subscribers or only 1.0% of Comcast's subscriber base in the Miami DMA.

¹⁴ RFD-TV has 43,579 Time Warner Cable subscribers or only 7.5% of Time Warner Cable's subscriber base in the Cleveland-Akron DMA.

¹⁵ RFD-TV has 10,488 subscribers or only 2.8% of Time Warner Cable's subscriber base in the Charlotte DMA.

¹⁶ RFD-TV has 14,234 Time Warner Cable subscribers or only 3.3% of Time Warner Cable's subscriber base in the Raleigh-Durham DMA.

derives the majority of its revenues from the sale of advertising time. The lack of any chance for equal measurement by Nielsen in these key markets puts RFD-TV at an enormous disadvantage when competing for advertising dollars with other cable channels, including those owned or controlled by urban-based media conglomerates.

Second, being blocked from major markets discourages RFD-TV's nearly 100 independent programmers from producing new programming. Carriage leads to ratings, which leads to financial incentives to create more programming. Conversely, a lack of carriage means that financial support for new content is simply not available.

Furthermore, RFD-TV is harmed not only by lack of carriage but also by the refusal of distributors (including Verizon, Comcast, Time Warner Cable, Bright House, Suddenlink, and DIRECTV) to offer RFD-TV's high-definition channel, RFD HD. For example, Verizon represented that it would rollout RFD HD on FiOS after it completed a technology upgrade. However, Verizon never added RFD HD, and when RFD-TV asked about progress on this issue, Verizon continually dismissed RFD-TV. Lack of HD carriage puts RFD-TV at even a further disadvantage against its competition for audience share, as the company has found its viewership increases as much as four times on systems that carry its high-definition program feed. HD carriage is a must in today's environment. Once again, it is the multi-channel conglomerates that continue to receive preferential treatment for the launch of their HD channels, while independent channels, such as RFD HD, are pushed aside and left waiting for a firm launch date or, in RFD-TV's case on Verizon FiOS TV, removed entirely from distribution in order to make room for other interests. This is not surprising given that, as shown below, six multi-channel conglomerates—Comcast-NBCUniversal, Disney, News Corporation, Time Warner, CBS, and Viacom—control approximately 90 percent of all license fees and channel slots.

Second, tiering practices have the effect of reducing the ability of independent programmers to obtain carriage. In some instances, RFD-TV is carried on sports tiers or other less penetrated tiers, which requires RFD-TV fans to pay more for tiers that they otherwise would not want, and reduces RFD-TV's reach. This is a further example of rural bias, as RFD-TV is the only channel providing news focused on rural America, yet it is relegated to lower-penetrated tiers while its competitors focused on urban news have distribution on basic cable as well as SiriusXM. For example, CNN, Fox News, Fox Business, MSNBC, Bloomberg, CNBC, HLN (formerly Headline News), Univision, and Al Jazeera are on expanded basic.

Third, contractual provisions in RFD-TV's master affiliate agreements with MVPDs hamper its ability to gain distribution. Specifically, most favored nation provisions, particularly those governing price, prevent RFD-TV from engaging in creative deal-making with new distributors and establish a ceiling on RFD-TV's ability to grow its affiliate revenues. And alternative distribution method clauses restrict RFD-TV's ability to be carried by over-the-top distributors. These clauses prevent RFD-TV from distributing its content online to those viewers that have access to broadband.

III. THE LOSS OF RFD-TV AND OTHER INDEPENDENT CHANNELS HARMS BOTH RURAL AND URBAN CONSUMERS

A. Consumers in Both Rural and Urban America are Drawn to Rural Programming

RFD-TV has viewers in all parts of the country, and an avid viewer base in not only rural markets but also urban and suburban markets.¹⁷ In fact, while RFD-TV is heavily penetrated and

¹⁷ Rural Media Group's satellite radio channel, RURAL RADIO, has also enjoyed tremendous success in both rural and urban markets. Notably, RURAL RADIO is carried in the same satellite radio packages as other news programming, whereas MVPDs often place RFD-TV, with

viewed by Nielsen “C” and “D” counties, which are rural, *nearly half* of its ten million average viewing homes each month are from more populous Nielsen “A” and “B” counties, proving that RFD-TV content is valuable to viewers in rural, suburban and urban areas. Indeed, many of these urban and suburban viewers have recently filed comments in this proceeding explaining how RFD-TV keeps them connected to and informed about rural interests, particularly through its rural news programming.¹⁸

Both rural and urban RFD-TV viewers, including senior citizens,¹⁹ are passionate about and reliant on RFD-TV’s programming because it offers information and content not easily

its rural news programming, on less penetrated tiers than other news channels.

¹⁸ See, e.g., Comment of Bob Hunter, MB Docket No. 16-41 (filed Mar. 15, 2016) (“RFD-TV is an integral part of my viewing and we live in the San Francisco Bay Area, not in a rural area. The programming contained in RFD-TV . . . provide[s] rural news, information and forecasts vital to the residents of rural communities as well as to those such as myself, who live outside of rural areas but have interests in rural communities.”); Comment of June Snow, MB Docket No. 16-14 (filed Mar. 18, 2016) (“I live in Los Angeles County . . . and would like to point out that millions of horse owners in [California] are interested in this programming.”); Comment of Eric Albert, MB Docket No. 16-41 (filed Mar. 16, 2016) (“I watch RFD-TV on DISH Network . . . in the New York City area While I am not engaged in agriculture directly, I like all Americans, benefit from this important activity. RFD’s programming provides me with insight so I may become informed and make better decisions about the food I eat.”); Comment of Darlene Robertson, MB Docket No. 16-41 (filed Mar. 30, 2016) (“I watch RFD-TV on Direct TV. As a[n] urban, African American I enjoy the informational programs on RFD-TV. I like understanding how my food is produced, and the business involved in agriculture. The programming there is not found anywhere, and I find myself returning there again [and] again for the wholesome programming.”).

¹⁹ See Comment of Ann Wickum, MB Docket No. 16-41 (filed Mar. 7, 2016) (“There is very little television programming out there for rural America and the senior citizens of our country. This kind of programming is so important for our Senior Citizens”); Comment of Leland Littleton, MB Docket No. 16-41 (filed Mar. 4, 2016) (“Please protect this program, it is very special to senior citizens.”); Comment of Betty J. Rose, MB Docket No. 16-41 (filed Mar. 4, 2016) (“Please do not allow this programming to be taken off the air. . . . I am a rural senior living independently, and RFD-TV provides me with important information to assist me in making decisions about my health and well being. I find great enjoyment in the programs they

found on other channels. And online sources of rural-oriented programming, to the extent available, are often not viable alternatives for two reasons. For one thing, many of RFD-TV's viewers are seniors who either have not adopted broadband²⁰ and/or cannot afford it. For another, broadband is often not available in rural America, as the Commission itself has recognized, and viewers may lack access to computers.²¹

RFD-TV meets the needs of numerous Americans who are not served by any other channel. As demonstrated by the numerous comments recently filed by RFD-TV viewers,²² they otherwise cannot find programming such as agricultural news and “family friendly

provide as well.”); Comment of Regina Holland, MB Docket No. 16-41 (filed Mar. 3, 2016) (“RFD-TV is in jeopardy of being taken off the air. Please don’t let that happen. We live in a senior community and talk about the programs we have watched and upcoming ones. It would be Very sad for all of us here to have that channel lost!!!”).

²⁰ See, e.g., Pew Research Center, “Older Adults and Technology Use” (April 2014), *available at* <http://www.pewinternet.org/2014/04/03/older-adults-and-technology-use/> (finding that 47% of seniors use broadband compared to 70% of all adults).

²¹ See, e.g., *2015 Broadband Deployment Report and Notice of Inquiry on Immediate Action to Accelerate Broadband Deployment*, FCC 15-10, ¶ 6 (2015) (finding that broadband at speeds of 25 Mbps downstream and 3 Mbps upstream is “unavailable . . . to 53 percent of Americans living in rural areas”); see also Comment of Viborg, SD, MB Docket No. 16-41 (filed Mar. 23, 2016) (expressing support for RFD-TV on behalf of approximately 62 individuals that lack computer access).

²² See, e.g., Comment of Dalton Gebhart, MB Docket No. 16-41 (filed Mar. 3, 2016) (“[L]iving in rural South Dakota it is very hard to find programming that relates to me and my family. RFD is one of the only agricultural based networks.”); Comment of Carri Hadlock, MB Docket No. 16-41 (filed Mar. 2, 2016) (“Please leave RFD on your programing list. It is hard to find family friendly programing for people who live, work and enjoy the western and rural life style.”); Comment of Wendy Otto-Shimun, MB Docket No. 16-41 (filed Mar. 25, 2016) (“I watch RFD-TV regularly. The western sports programming is a one of [a] kind form of entertainment that you cannot find on any other network.”); Comment of Dorothy Volz, MB Docket No. 16-41 (filed Feb. 29, 2016) (“It is the only network where we can watch rodeo events such as the American and others.”); Comment of Don Miller, MB Docket No. 16-41 (filed Feb. 29, 2016) (“I watch RFD-TV on a daily basis. [I]t is the ONLY place to receive agriculture news, weather and markets. There is no other option.”).

programming” that is focused on the “western and rural life style.” With respect to financial news in particular, RFD-TV offers a unique perspective and disseminates information not found on other channels that is critical to the agricultural and investment communities. Agriculture markets are international in scope and affect far more than just rural communities, yet those markets are often ignored by urban-focused economic and market reporting. Only RFD-TV devotes five-and-a-half hours daily to coverage of agribusiness, including news stories, weather, and market analysis. Similarly, RFD-TV’s Rural Town Hall series allows both rural and urban viewers to hear from the presidential candidates on issues affecting agriculture and rural America,²³ something they cannot necessarily do on other networks. With both its news reporting and the Rural Town Hall series, RFD-TV thus fills in a critical gap in media coverage. Nevertheless, as discussed above, MVPDs often distribute RFD-TV on tiers other than the basic tier.²⁴ This is despite the fact that all other major news channels are carried on the basic tier.

In its recent filing in this docket, the National FFA Organization (formerly Future Farmers of America) highlighted the important role that RFD plays in providing unique rural programming to viewers throughout the country.²⁵ FFA represents approximately 630,000 agricultural students and educators in the U.S., and has over 7 million alumni. Notably, FFA has chapters and school programs in 15 of the 20 largest U.S. cities, including New York, Chicago,

²³ RFD-TV, RFD-TV Brings You the 2016 Presidential Candidates, <http://www.rfdtv.com/story/29554955/rfd-tv-%20brings-you-the-2016-presidential-candidates#.Vt23H2cUWmR>.

²⁴ For this reason, RFD-TV viewers frequently cannot watch the channel in motels and hotels, which generally offer MVPDs’ basic packages to their guests.

²⁵ See Letter from W. Dwight Armstrong, CEO of National FFA Organization to FCC, MB Docket No. 16-41 (filed Feb. 23, 2016).

Houston, Philadelphia, and Los Angeles, demonstrating the urban connection to agriculture.²⁶

FFA stressed the importance of rural programming in attracting a talented and well-prepared workforce, and emphasized the “significant harm” that blocking rural programming such as RFD-TV from urban markets will have on agriculture and the nation’s rural communities.²⁷

Noting that “17 percent of Americans work[] in the agriculture, food and natural resources industry,” FFA underscored the “very real and far-reaching consequences” of the Commission’s decisions regarding access to such programming.²⁸ FFA further noted that it views RFD-TV as “an indispensable communication outlet” for agricultural education that enables FFA “to share important educational and motivational content with millions of current and former members, educators, supporters and the general public in rural, suburban and urban markets.”²⁹

B. Lengthy Contracts and Termination Fees Raise Switching Costs and Limit the Potential Disciplining Effects of Competition

Although RFD-TV is “must have” programming for many of its viewers, these viewers cannot readily respond to an MVPD’s decision to drop RFD-TV by switching providers. Many MVPDs, such as Verizon, lock customers in lengthy contracts or charge high early termination fees,³⁰ even when those customers subscribed on the promise of obtaining particular

²⁶ *Id.* at 2.

²⁷ *Id.* at 1-2.

²⁸ *Id.* at 2.

²⁹ *Id.* at 1.

³⁰ *See, e.g.*, Comment of Brock Prather, MB Docket No. 16-41 (filed Mar. 1, 2016) (“I watched RFD-TV on Verizon FiOS until they removed it in which we were extremely disappointed, We can’t switch providers due to the huge cancelation fees.”); Comment of Roszella Stephenson, MB Docket No. 16-41 (filed Feb. 26, 2016) (“We are on a fixed income and [cannot] change without paying a fairly large cancellation fee, but as soon as our contract is up, we definitely will

programming, such as RFD-TV. Indeed, many consumers filed comments in this proceeding explaining that they subscribed to Verizon specifically to obtain RFD-TV, only to have Verizon pull the rug out from under them.³¹ Moreover, RFD-TV viewers in rural and non-rural markets may not have a viable alternative to the incumbent cable company in their area.³²

The Commission has previously recognized the effects of switching costs on competition and the availability of competitive alternatives. For example, the switching costs associated with changing phone numbers in order to switch wireless carriers led to local number portability.³³

cancel and go to a company that is closer to what we enjoy.”); Comment of Marcia Barnes, MB Docket No. 16-41 (filed Feb. 24, 2016) (“We watch RFD-TV more than any other channel. If it is not brought back we will have to pay a cancellation fee to switch to another provider.”).

³¹ See, e.g., Comment of Charles R. Hoyt, MB Docket No. 16-41 (filed Feb. 25, 2016) (“I feel that Verizon has not lived up to their agreement to maintain the channels that I have enrolled for and paid. I made it a specific comment that the only reason that I was enrolling for a two year period with them was that Comcast did not offer the RFD channel. Now after a year they have removed the channel”); Comment of Thomas and Barbara Zetty, MB Docket No. 16-41 (filed Mar. 7, 2016) (“[W]e converted to Verizon TV service several years ago, primarily because we wanted RFD-TV . . . We probably would have gone to another provider, otherwise.”); Comment of Jane Panagi, MB Docket No. 16-41 (filed Mar. 4, 2016) (“I signed a contract for the premium movie channels with Verizon solely to get RFD-TV as this was the only way to get this network.”); Comment of Ruth Thousand, MB Docket No. 16-41 (filed Mar. 3, 2016) (“I am writing this for my father, James Russell Rock. Verizon FiOS removed the RFD-TV channel . . . The only reason he signed up for Fios [sic] was because of this channel.”).

³² See, e.g., Comment of Sharon Stechna, MB Docket No. 16-41 (filed Feb. 24, 2016) (“We live too far out to get other cable options and satellite is bad.”).

³³ See *In the Matter of Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 96-286, ¶¶ 2-3 (1996); See also Press Statement of Commissioner Kevin J. Martin on the Commission’s Decision on Verizon’s Petition for Permanent Forbearance from Wireless Local Number Portability Rules (July 16, 2002) *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-224368A4.pdf (“The inability of consumers to keep their phone numbers when they switch carriers can be an impediment to competition. It imposes a cost to switching carriers, which, for many consumers, could be significant. . . . These costs not only provide a disincentive for consumers that may want to switch providers, they also disadvantage new entrants to the market.”).

The sunk costs associated with mobile device investments led to cell phone unlocking rules that further facilitated consumers' ability to switch wireless carriers.³⁴ And in 2015, the Commission adopted Open Internet rules in part because high switching costs can impede consumers' ability to show their dissatisfaction with their current broadband provider by switching to a new provider.³⁵

While MVPDs often tout the growth in competition among distributors, lengthy contracts and termination fees limit the benefits of any such competition. If consumers were able to switch providers easily, then the tens of thousands of dissatisfied FiOS customers could bring their spending power to bear and influence Verizon's programming decisions. But high switching costs create an additional impediment that insulates urban programming executives from facing the full implications of their decisions to drop independent channels.

IV. THE COMMISSION SHOULD TAKE ACTION TO ENSURE THE AVAILABILITY OF RURAL- AND SENIOR-ORIENTED PROGRAMMING

While this *NOI* is an important and positive first step in understanding the challenges that independent programmers face, it should not be the last step. The Commission should move quickly to take specific action to protect independent programming and ensure that consumers

³⁴ See FCC Chairman Tom Wheeler Statement on Signing of Cell Phone Unlocking Bill, (Aug. 1, 2014) available at https://apps.fcc.gov/edocs_public/attachmatch/DOC-328624A1.pdf (supporting President Obama's signing of the cellphone unlocking bill, and stating that the bill "gives consumers the freedom to switch between wireless carriers without having to purchase a new cellphone, allowing them to choose the mobile service plan that fits their specific needs and budget").

³⁵ See *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24, ¶ 81 (2015) (finding that the "broadband provider's position as gatekeeper is strengthened by the high switching costs consumers face when seeking a new service," and that "consumers' ability to respond to unjust or unreasonable broadband provider practices are limited by switching costs").

have access to a diversity of content. In particular, the Commission should address the more immediate concerns raised regarding the availability of programming for rural Americans and senior citizens. The federal government has long recognized the importance of rural America and ensuring that a connection is maintained between rural and urban communities.³⁶ And RFD-TV's experience demonstrates that nothing short of FCC intervention will ensure that urban-based MVPDs do not discriminate against rural programming and that Americans throughout the country that have an interest in such programming can access it.

A. The Commission Should Use This NOI as a Spring Board for Concrete Action

To protect MVPD subscribers from the loss of valuable independent programming such as RFD-TV, the Commission should take several actions.

First, the Commission should initiate a proceeding to determine whether MVPD practices of requiring long-term subscriber contracts and imposing termination fees, coupled with cancellation of programming that was the basis for the subscriber's enrollment in the first place, should be prohibited. Specifically, the Commission should initiate a rulemaking proposing to prohibit MVPDs from enforcing termination fees within 90 days of dropping programming, so that consumers who enrolled on the promise of obtaining certain programming can switch to a competing MVPD. Only then will market forces be able to discipline the programming decisions of the major conglomerate distributors. In addition, Verizon in particular should be required to (1) offer *all* of its subscribers billing credits for the loss of RFD-TV, The Weather Channel, the Outdoor Channel, and the Sportsman Channel, not merely those that took the time

³⁶ For example, in the late 1890s, Congress helped establish Rural Free Delivery mail service, or RFD, to deliver mail directly to those in rural areas.

to complain about the decision to drop RFD-TV; (2) waive termination fees for those that subscribed to FiOS through two-year term contracts on the basis that they would be able to watch RFD-TV; and (3) bring back RFD-TV until those two-year term contracts run their course and provide proper notification to both RFD-TV and subscribers of Verizon's intention to drop the channel.

Second, the Commission should open an investigation into whether Verizon's pattern and practice of discriminating against rural- and senior citizen-oriented programming is based on bias rather than genuine business decisions. Its decision to drop RFD-TV, shortly after dropping other rural- and senior citizen-oriented programming such as The Weather Channel, the Sportsman Channel, and the Outdoor Channel, suggests a bias against rural America and senior citizens. Verizon is clearly purging itself of rural content because it has no interest in offering such content. And the miniscule financial impact, particularly when coupled with RFD-TV's offer to reduce its already low rates by 25% and Verizon's application of \$60 in billing credits to certain concerned subscribers, demonstrates that there is no plausible financial basis for Verizon's decisions. These facts create an ideal test case for evaluating discrimination against programming that serves rural Americans and connects viewers in urban areas in Verizon's Northeast territory to rural America. A finding that Verizon has engaged in discriminatory conduct that targets certain segments of the population based on geographic location or age could have implications for Verizon's suitability and authority to hold FCC licenses, engage in transactions, etc. given that such discrimination is clearly not in the public interest.

Third, the Commission should take action in its pending “good faith” retransmission consent proceeding to “break up the bundle.”³⁷ One argument that MVPDs have raised in the past is that they are forced to buy so many channels from major programming conglomerates that they lack additional capacity for independent programmers. It seems unlikely that IP-based systems like Verizon have genuine capacity constraints such that they cannot carry RFD-TV and RFD HD. However, for some MVPDs, it remains true that compelled carriage of less desirable programming from major conglomerates that is tied to “must have” broadcast programming creates the risk of crowding out unique and popular independent programming like RFD-TV.

Fourth, the Commission should initiate a rulemaking and adopt rules requiring MVPDs to devote a minimum percentage of their channel capacity to independent programmers with unique content that serves a clearly underserved audience and fills a void not addressed by other channels. This action is necessary to foster programming diversity and constrain MVPDs’ bottleneck market power over distribution and their discrimination in favor of affiliated programmers.

Finally, the Commission should continually look for additional vehicles, such as merger proceedings, through which it can promote the availability of independent programming. As the Commission considers various initiatives, such as new set top box rules, it should focus on promoting the distribution of independent voices.

³⁷ See *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, Notice of Proposed Rulemaking, FCC 15-109 (2015).

B. The Commission Has Legal Authority to Take Action to Preserve Independent Programming and Protect Consumers

The Commission has the statutory authority to take action to preserve independent programming and protect consumers. In particular, Section 616 of the Cable Act contains a broad grant of authority for the Commission to “establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors.”³⁸ That is broad, unqualified statutory language that easily encompasses practices that MVPDs engage in to freeze out independent channels and carriage of independent programming by MVPDs.

Although the Commission historically has limited its rules issued under Section 616 to the specific practices identified in the statute, the first sentence of Section 616 is not so limited, and the specific practices identified in the statute are best read as minimum requirements, not maximum limitations. Indeed, the structure of Section 616 parallels the program access provision, Section 628(c), in that it provides a broad grant of authority to issue regulations followed by specific content that those regulations must contain, but the subheading of Section 628(c)(2) confirms that those specific practices are “minimum contents of regulations.”³⁹ And while Section 616 lacks a similar heading, the parallel structure of the provisions should lead the Commission to conclude that Section 616’s specific regulatory requirements are similarly best read as minimum contents.⁴⁰

³⁸ 47 U.S.C. § 536.

³⁹ *Id.* § 548(c).

⁴⁰ The Commission also has broad authority under Section 325(b)(3) of the Communications Act to take action with respect to breaking up the bundle, at least with respect to programming that is

Moreover, Commission actions such as those recommended in Part IV.A above would be entirely consistent with Congress' goal in Section 257(b) of the Act of promoting "diversity of media voices."⁴¹ In particular, the Commission should rely on Section 257 and Section 616 to find that, to redress MVPDs' bottleneck market power over programming distribution, MVPDs should be required to devote a minimum percentage of their channel capacity to independent programmers that promote diversity and fill voids not addressed by other channels.

CONCLUSION

Within the past three years, more than 100,000 RFD-TV viewers have made their voices heard at the FCC and demonstrated that RFD-TV provides unique programming that serves the needs and interests of rural as well as urban Americans and senior citizens. Indeed, these viewers have filed comments in this proceeding, the AT&T-DIRECTV merger review proceeding, and the Comcast-Time Warner Cable merger review proceeding out of concern that, as the industry consolidates, there are fewer and fewer opportunities for the distribution of rural, independent programming.

In light of the bias and discrimination against rural independent programming shown by the few urban-based MVPDs that dominate distribution in this country, the Commission should swiftly and decisively take the actions recommended herein to preserve this programming and protect the consumers that watch it. Only prompt FCC action will stop this discrimination, the

tied to broadcast content. That provision authorizes the Commission to issue regulations "to govern the exercise by television broadcast stations of the right to grant retransmission consent." *Id.* § 325(b)(3)(A). That authority is broad enough to include a regulation, for example, that retransmission consent rights be exercised *solely* for broadcast content, and that affiliated content must be separately negotiated.

⁴¹ *Id.* § 257(b).

resulting losses of carriage, and the attendant harms to both independent programmers and the consumers they serve – in urban as well as rural areas. There is no question that the Commission has the statutory authority to take the actions proposed in these comments. Therefore, the Commission must act now. Only then will the Commission achieve its goal of “fostering a diverse . . . marketplace for the delivery of multichannel video programming.”⁴²

Respectfully submitted,

/s/ Patrick Gottsch

Patrick Gottsch, Founder
RFD-TV
49 Music Square West
Suite 301
Nashville, TN 37203
(615) 227-9292

March 30, 2016

⁴² *NOI ¶ 2.*

ATTACHMENT A

From: Verizon Notification <verizon-notification@verizon.com>

Date: January 15, 2016 at 12:09:57 EST

To: [REDACTED]

Subject: Important Information About RFD TV

My Verizon Support

Channel update

Verizon is committed to providing our customers with the best TV experience while keeping our prices low. Each year, the cost of content increases substantially, and in order to prevent those costs from being reflected in your bill, it is sometimes necessary to remove channels from our lineup. We have decided not to renew our contract for RFD-TV, and will discontinue delivering it effective 1/31/16. We are sorry for any inconvenience this may cause.

© 2016 Verizon. All Rights Reserved.

Ensure Verizon emails reach your inbox by adding verizon-notification@verizon.com to your “safe” email list. Your email or Internet provider can provide instructions on how it works.

This email has been sent from an auto-notification system that cannot accept incoming email.